



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1996

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR96-1505

Dear Mr. Alcorn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100975.

The City of Grand Prairie (the "city") received a request for all of the commendations, complaints, and discipline actions "given to or taken against" a named police officer. The requestor also seeks all offense, incident, or complaint reports filed by the officer against his ex-wife. You assert that the records at issue are confidential pursuant to section 143.089 of the Local Government Code, and sections 552.101, 552.103 and 552.108 of the Government Code.

It is our understanding that the city is subject to the provisions of section 143.089 of the Local Government Code. Section 143.089 provides for the maintenance of a civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The department may keep information in this separate, internal file for its own use. The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file and determined that section 143.089(g) makes records kept in the department's internal file confidential.

Although information in the internal file is confidential, information in a police officer's civil service file must be released upon written permission of the police officer or as required by law. *Id.* § 143.089(f). Information in the civil service file must be

released if chapter 552 of the Government Code requires its release.¹ Open Records Decision No. 562 (1990) at 5-6.

It appears from your correspondence that the civil service records submitted to this office for review are those contained in Exhibit A. You state that because there are criminal trespass and assault charges pending against the police officer, information about these charges may be withheld from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. Since Exhibit A does not appear to contain information concerning these particular charges, sections 552.103 and 552.108 are inapplicable. Thus, the civil service records in Exhibit A must be disclosed.

You submitted to this office records that you indicate are from an internal affairs file. Records that are maintained in the internal file pursuant to section 143.089(g) are confidential and may not be disclosed. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied); Open Records Decision No. 562 (1990) at 7.

The requestor has also asked for information about the incident or offense reports concerning the officer's ex-wife. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public.

The privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. *See* 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C.

¹You contend that the civil service file is confidential under section 143.089. In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court concluded a police department's internal file is confidential under section 143.089(g), but this reasoning did not extend to the civil service file. As to civil service files governed by sections 143.089(a)-(f), the court stated:

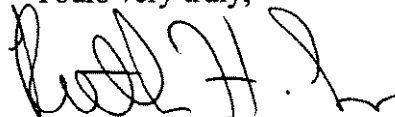
The contents of an individual's personnel file may not be disclosed without the individual's written consent "unless the release of the information is required by law" - an evident reference to the disclosure requirements of the [Open Records] Act.

§ 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. See Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).²

In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (hereinafter "*Houston Chronicle*"), the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense reports, police blotters, "show-up" sheets, arrest sheets, and "Personal History and Arrest Records." The court held that some of this information was available to the public under the Open Records Act. However, the court also determined that records primarily containing criminal histories, such as information regarding previous arrests and other data relating to suspected crimes, are protected from disclosure. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. The court held that release of these documents would constitute an unwarranted invasion of privacy interests. *Id.* at 188. The broad request at issue, for information concerning complaints and offenses involving one named individual, appears to be a request for the same type of information made confidential by *Houston Chronicle Publishing Co.* Thus, the incident or offense information requested may not be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 100975

Enclosures: Submitted documents

²The Code of Federal Regulations defines "criminal history information" as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b). The information at issue here fits this description.

cc: Ms. Deanna D. Boyd
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(w/o submitted documents)